

Area gas drilling cases unresolved

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By David Beard, The Dominion Post, Morgantown, W.Va.

June 3--Here are updates of several other area cases that The Dominion Post has been following involving natural gas operators.

Bombardiere case

Salvatore M. Bombardiere Sr., of Clarksburg, is suing Schlumberger Technology Corp. (STC), of Texas, CONSOL Energy and its subsidiaries CNX Gas Co. and CNX Gas Corp., and SOS Staffing Services Inc., of Utah.

Bombardiere alleges he was exposed to fracking chemicals without adequate training or protective gear, leading to burns, scarring, disfigurement, respiratory problems and post-traumatic stress disorder.

The case is being heard in the U.S. District Court for the Northern District of West Virginia in Clarksburg, by District Judge John Preston Bailey.

In late April, Bailey vacated a protective order by a federal magistrate regarding the dissemination of Schlumberger's trade secrets in three of its fracking chemicals.

Magistrate James E. Seibert's order said Schlumberger could label trade secrets as "confidential," and granted access to certain parties, with procedures to disclose them to additional parties.

Schlumberger objected to the order, saying the magistrate overstepped case law. Revealing the exact details of three of the 10 products in question would "adversely impact STC's standing in the marketplace." It said the plaintiff has access to material safety data sheets regarding the three compounds, and the precise formulations aren't necessary to his case.

Schlumberger asked the judge to permit a "highly confidential" designation with restricted access to the formulations that wouldn't inhibit Bombardiere's preparation for trial. Bailey agreed and adopted an order drafted by Schlumberger.

Schlumberger, a gas drilling and development company, and CNX use SOS to hire contract workers for gas well operations. In December 2009, SOS hired Bombardiere to work at two Pennsylvania well pads for Schlumberger and CNX.

Schlumberger contends it acted reasonably and prudently according to current technology and practices. Bombardiere failed to take reasonable action to mitigate his injuries. Any damages should be offset by workers' compensation payments.

Given various delays, both sides asked May 24 to extend deadline dates, including moving the trial from Nov. 13 to a date suiting the court's discretion.

Whiteman case

This case came to the U.S. District Court for the Northern District of West Virginia in Wheeling in 2011.

Martin and Lisa Whiteman, of Silver Hill, Wetzel County, allege that Chesapeake Appalachia has permanently damaged and polluted a portion of their property by burying hazardous Marcellus gas well drilling waste there.

The Whitemans want the cutting removed and want various damages awarded.

On May 29, Circuit Judge Frederick P. Stamp Jr. agreed to both sides' request to hold a bench trial instead of a jury trial. The trial is set for June 12.

In a May 23 pretrial order, both sides agreed to certain facts: Chesapeake has the right to develop the minerals on the property; Chesapeake placed drill cuttings -- sometimes called waste -- on the land and the waste is still there; Chesapeake can and does extract gas on other well pads without leaving cuttings on site; the Whitemans signed a damage release form.

The two sides' disputed facts include whether the drill cuttings are migrating or causing contamination or health problems; and whether the wells were drilled and completed properly; whether Chesapeake's actions were "willful, wanton and egregious."

Teel case

This case also came to the U.S. District Court for the Northern District of West Virginia in Wheeling in 2011.

Dewey and Gay Teel, of Blake Ridge, Wetzel County, similarly allege that Chesapeake has permanently damaged and polluted a portion of their respective property by burying hazardous Marcellus gas well drilling waste there.

In March, Judge Stamp granted a request by Chesapeake to change the scheduling order to permit another 90 days of discovery and to defer the Teels' request for partial summary judgment.

Chesapeake has alleged that Gay Teel and her brother, Jeff Davis, gave false testimony regarding a separate lawsuit involving ownership of the land in question during a December 2011 deposition.

The Teels seek an injunction for Chesapeake to remove the waste and deposit no more, to remediate contamination, and detail the quantity, location and composition of the waste; they want to receive punitive, compensatory and special damages.

Settlement negotiations are set for no later than Aug. 17; pretrial/final settlement conference is Aug. 27; jury selection and trial commence Sept. 11.

Miller case

This case also came to the U.S. District Court for the Northern District of West Virginia in Wheeling in 2011.

John W. and Mary Miller, of Moundsville, are suing Chesapeake Appalachia and its parent company, Chesapeake Energy, claiming Chesapeake failed to make a delay rental payment, thereby voiding the lease, but Chesapeake won't surrender the lease.

Plaintiffs want the lease voided and Chesapeake kicked off their land.

A delay rental is an annual payment made to allow delay of drilling. The Millers allege Chesapeake missed its \$328.20 payment in February 2011, then missed the 60-day payment window in April.

On May 4, both sides petitioned Judge Stamp to make a summary judgment in their favor, given the lack of dispute over material facts. On May 25, both sides submitted arguments why the judge should decide in their favor and against the other's. They await the judge's response.

Chesapeake wants the case dismissed, contending the Millers haven't proven their assertions about ownership of the land, notice of payment due or default of payment.

Bell case

A Valley Bend, Randolph County, couple is suing Chesapeake and a contracted landsman, claiming they were "strongarmed" into leasing mineral rights for \$5 an acre that were actually worth up to \$5,000 an acre.

Howard and Ethelyn Bell are seeking unspecified monetary damages plus interest, attorney fees and costs, and asking to have the leases voided. They want the right to renegotiate the leases and not have their land tied up.

The complaint says they signed four leases -- in November 2007 and June 2008 -- for a sign-on bonus of \$5 per acre and a 12.5 percent royalty. Similar property in the area was going for bonuses of \$2,500 to \$5,000 an acre, and royalties of 15-18 percent.

At the time, they "were an impoverished, elderly couple who were at a substantial bargaining disadvantage ... due to their severe lack of knowledge about oil and gas rights and were unapprised of the reasonable and common value of an acre of land" for gas exploration.

"The plaintiffs were strong-armed by the powerful defendants and were fraudulently convinced that they had no other option but to sign the leases."

The Bells originally filed suit in Randolph County Circuit Court, in August 2011. It was transferred to the U.S. District Court for the Northern District of West Virginia in Elkins in September.

Both defendants filed a motion to have the case dismissed. In considering the motion in December, Judge Bailey determined the case doesn't belong in federal court because the landsman, Thomas Milstead, is a West Virginia resident.

Bailey made no decision on the motion and instead remanded the case back to circuit court.

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